

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ASHLEY ADAMS, individually and as the  
representative of the Estate of RODNEY GERALD  
ADAMS; and WANDA ADAMS, individually;

CARLETTE HUNTER JAMES, individually and as the  
representative of the Estate of KENNETH WAYNE  
JAMES; KRISTY JAMES, KRYSTAL JAMES,  
KENDRICK JAMES, ARLETT JAMES, JONATHAN  
JAMES and KENNETH EVANS, individually and as  
heirs-at-law to the Estate of Kenneth Wayne James, and  
MARY LOU JAMES, individually,

CADE HUDSON, individually and as the representative  
of the Estate of DOUGLAS HUDSON,

PLAINTIFFS

CIVIL ACTION NO.  
6:13-CV-712

JURY DEMANDED

v.

BRAD LIVINGSTON, individually and in his official  
capacity, JOE OLIVER, NANCY BETTS, L. FIELDS,  
JOHN DOE, ROBERT LEONARD, BRANDON  
MATTHEWS, DEBRA GILMORE, SARAH RAINES,  
DANNY WASHINGTON, MATTHEW SEDA, TULLY  
FLOWERS, DORIS EDWARDS, LINDA McKNIGHT,  
REVOYDA DODD, RICK THALER, WILLIAM  
STEPHENS, ROBERT EASON, DENNIS MILLER,  
REGINALD GOINGS, and OWEN MURRAY in their  
individual capacities, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, and UNIVERSITY OF TEXAS  
MEDICAL BRANCH

DEFENDANTS

**PLAINTIFFS' SURREPLY TO DEFENDANTS' LIVINGSTON, STEPHENS AND  
THALER'S MOTION TO DISMISS**

In Plaintiffs' Response to Defendants' Livingston, Stephens, and Thaler's Motion to Dismiss they provided the Court a citation to the National Weather Service's website for the following quotation included in the complaint:

Heat is the number one weather-related killer in the United States, resulting in hundreds of fatalities each year. In fact, on average, excessive heat claims more lives each year than floods, lightning, tornadoes and hurricanes combined.

In fact, the quoted passage appears on the webpage of the National Oceanic and Atmospheric Administration, a federal agency that includes the National Weather Service.<sup>1</sup> Defendants are correct, the National Weather Service website cited in Plaintiffs' response states heat is but "one of the leading weather-related killer[s]," rather than the "number one" killer. Plaintiffs' counsel sincerely regrets the citation error, but stands by the National Oceanic and Atmospheric Administration's findings.<sup>2</sup>

In either case, the point is not whether heat is the "number one weather-related killer" or merely "one of the leading weather-related killers." This distinction misses the forest for the trees. Extremely high temperatures, like those indoors at the Hutchins State Jail, are known to kill people – whether you believe the National Weather Service or the National Oceanic and Atmospheric Administration. Unlike *Woods v. Edwards*, where the temperatures were merely "uncomfortable" and the *pro se* plaintiff "failed to present medical evidence of any significance [or] identif[y] a basic human need that the prison has failed to meet," Hudson, James, and Adams were killed by the extreme indoor

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<sup>1</sup> National Oceanic and Atmospheric Administration, "Heat Wave: A Major Summer Killer," <http://www.noaa.gov/themes/heat.php> (last visited November 1, 2013).

<sup>2</sup> Of course, this error merely highlights that the Plaintiffs' raise a factual dispute – is NOAA or the NWS correct? – making resolution of this case at the motion to dismiss stage inappropriate. Plaintiffs' Amended Complaint's assertion that heat is the "number one weather-related killer" is presumed true for purposes of this motion, regardless of whether it is the "number one" or merely "one of the leading weather-related killers." See, e.g., *Lindquist v. City of Pasadena*, 525 F.3d 383, 386 (5th Cir. 2008).

temperatures. 51 F.3d 577, 581 (5<sup>th</sup> Cir. 1995) (per curiam).<sup>3</sup> Temperatures at the Gurney Unit were not merely uncomfortable – they were deadly. And Livingston knew these conditions in his prisons would kill people – especially heat-vulnerable people like Hudson, James, and Adams. But he tolerated and approved these conditions, and, as a predictable result, men died.

Plaintiffs’ Amended Complaint adequately alleges facts sufficient to deny Livingston, Thaler, and Stephens’ Motion to Dismiss.

DATED: November 1, 2013.

Respectfully submitted,

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<sup>3</sup> And, following its opinion in *Woods*, the Fifth Circuit has repeatedly stated dangerously high temperatures violate the Eighth Amendment. See *Blackmon v. Garza*, 484 Fed.Appx. 866, 869 (5<sup>th</sup> Cir. 2012) (unpublished); *Valigura v. Mendoza*, 265 Fed. Appx. 232 (5<sup>th</sup> Cir. 2008); *Gates v. Cook*, 376 F.3d 323, 334 (5<sup>th</sup> Cir. 2004).

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Eastern District of Texas.